From: Don Berberich
To: Microsoft ATR
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Subject: Microsoft Settlement

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I wish to add my comments on the proposed Microsoft antitrust remedy, within the auspices of the Tunney Act. I am a citizen of the United States and a resident of Cincinnati, Ohio. The current proposed settlement for the Microsoft antitrust trial is an insufficient remedy. I work in the information technology field and have direct exposure to the negative impact of the Microsoft monopoly on a daily basis. Microsoft has created a cycle:

1) The dominance of Microsoft operating systems and unfair practices have created a dependency on Microsoft applications, specifically Microsoft Office.

2) The predominance of Microsoft applications, which are insufficiently available for non-Microsoft operating systems, compels the purchase of additional Microsoft operating systems. In fact, companies which provide applications with similar functionality to Microsoft products are purchased or unfairly driven out of business. This was seen in the trial, in the form of the attacks on Java and the Netscape browser. Currently, economic attacks against companies such as Corel have forced the cessation of development of a competitive operating system and restricted the availability of a competitive office suite.

Any remedy must approach the need for competitive applications for Microsoft operating systems, as well as the need for Microsoft applications to support non-Microsoft operating systems. Here are additional ideas for preventing Microsoft from exercising monopoly power in the Intel-compatible PC arena:

1) Microsoft is currently holding its monopoly through unfair OEM licensing practices and limiting most Microsoft applications to its own operating systems. A solution to the operating system issue: Each Microsoft application must be developed for at least two non-Microsoft operating systems, at Microsoft's expense. The non-Microsoft operating systems should hold at least 2% of the Intel-PC desktop operating system market share or a similar requirement to increase the acceptance of non-Microsoft operating system which have already carved an initial foothold. If an operating system developer/provider wishes, at the

developer's expense, to modify and enhance Microsoft applications so that they will run on the provider's operating system, complete source code will be provided to the operating system developer to create. Microsoft may collect royalties no greater than the sum charged to OEMs for the Microsoft developed version of the application.

2) Investigate and restrict the subscription based licensing, which Microsoft currently proposes. In this model, customers are economically compelled to keep the costly subscriptions, possibly owning no product at the end of the subscription.

I also agree with these suggestions at http://www.gnu.org/philosophy/microsoft-antitrust.html:

"1. Require Microsoft to publish complete documentation of all interfaces between software components, all communications protocols, and all file formats. This would block one of Microsoft's favorite tactics: secret and incompatible interfaces.
To make this requirement really stick, Microsoft should not be allowed to use a nondisclosure agreement with some other organization to excuse implementing a secret interface. The rule must be: if they cannot publish the interface, they cannot release an implementation of it.

It would, however, be acceptable to permit Microsoft to begin implementation of an interface before the publication of the interface specifications, provided that they release the specifications simultaneously with the implementation.

Enforcement of this requirement would not be difficult. If other software developers complain that the published documentation fails to describe some aspect of the interface, or how to do a certain job, the court would direct Microsoft to answer questions about it. Any questions about interfaces (as distinguished from implementation techniques) would have to be answered.

Similar terms were included in an agreement between IBM and the European Community in 1984, settling another antitrust dispute. See http://www.cptech.org/at/ibm/ibm1984ec.html.

2. Require Microsoft to use its patents for defense only, in the field of software. (If they happen to own patents that apply to other fields, those other fields could be included in this requirement, or they could be exempt.) This would block the other tactic Microsoft mentioned in the Halloween documents: using patents to block development of free software.
We should give Microsoft the option of using either self-defense or mutual defense. Self defense means offering to cross-license all patents at no charge with anyone who wishes to do so. Mutual defense means

licensing all patents to a pool which anyone can join--even people who have no patents of their own. The pool would license all members' patents to all members.

It is crucial to address the issue of patents, because it does no good to have Microsoft publish an interface, if they have managed to work some patented wrinkle into it (or into the functionality it gives access to), such that the rest of us are not allowed to implement it.

3. Require Microsoft not to certify any hardware as working with Microsoft software, unless the hardware's complete specifications have been published, so that any programmer can implement software to support the same hardware.
Secret hardware specifications are not in general Microsoft's doing, but they are a significant obstacle for the development of the free operating systems that can provide competition for Windows. To remove this obstacle would be a great help. If a settlement is negotiated with Microsoft, including this sort of provision in it is not impossible--it would be a matter of negotiation. "

In addition, please review the following web sites:

http://www.kegel.com/remedy/letter.html
http://www.linuxplanet.com/linuxplanet/opinions/4020/1/
http://www.gnu.org/philosophy/microsoft-antitrust.html

Regards,

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